

New Mexico Office of Natural Resources Trustee



121 Tijeras Avenue, NE
Suite 1000
Albuquerque, New Mexico 87102
www.onrt.state.nm.us



New Mexico's natural resources are critical to our state's prosperity.

ONRT's mission is to return injured natural resources and the services they provide to the condition that would have existed absent the release of contamination.

Our tourism and recreation industries depend on our pristine landscapes, natural wonders, high quality of life, and rich cultural heritage.

Three Important Steps

Damage Assessment

- ▶ **Damages:** the amount of money sought as compensation for injury, destruction, or loss of natural resources [43 CFR § 11.14(I)].

Litigation and/or Settlement

- ▶ Court-approved Settlements provide reimbursement for past costs and money for Restoration. Usually, the responsible party cooperates to settle rather than litigate.

Restoration

- ▶ The purpose of restoration projects and cash settlements is first to restore injured resources, and if that is not possible, to replace or acquire equivalent natural resources and the services that were lost or impaired. **Restoration is different than clean up, remediation, rehabilitation, and reclamation.**



ONRT Personnel

The Agency has been in operation since the mid-1990's and is staffed by:

- The Trustee, Butch Tongate. Mr. Tongate is also the Cabinet Secretary of the New Mexico Environment Department;
- An Executive Director. This position is currently vacant but will be filled in the next few weeks;
- A Water Resources Professional, William Fetner; and
- A Business Operations Specialist, Elysia Buntten.



ONRT Budget Request

- ▶ General Fund Request: \$266,000. This is only 11.5% of total budget.
 - ▶ ONRT is requesting a 5.6% base budget increase. This will allow the Agency to continue operating at the same level of services as in FY18 and FY19 (see *slide #11*).
- ▶ Other State Funds (Trustee Fund) Request: \$2,056,200. This is existing funding from settlements and mostly earmarked for restoration projects.
 - ▶ Damage Assessment and Restoration Projects \$2,000,000
 - ▶ Increase requested to have sufficient budget available for projects.
 - ▶ Supplement Operating Expenses \$56,200.



Trustee Fund Balances

- ▶ There are two types of money in the Trustee Fund:
 - ▶ Cost Recovery - \$234,446 (Balance at 6/30/18)
 - ▶ Committed for assessments.
 - ▶ Currently being appropriated to supplement operating expenses (see *slide #11*).
 - ▶ Adequate assessment funding is critical for new cases. Inadequate funding will cripple the Agency's ability to initiate new actions. Without new actions, settlements and then restoration projects will cease.
 - ▶ Restoration - \$6,331,664 (Balance at 6/30/18)
 - ▶ Use of these funds is restricted by Federal Law (see *slide #10*).



Restoration Projects

- ▶ Since the early 2000's, ONRT has completed more than 20 restoration projects, including groundwater protection, conservation and clean-up, wildlife and wildlife habitat protection, and enhancement projects;
- ▶ ONRT currently has 15 active restoration projects across the State, some nearing completion and others in the initial planning and design phases;
- ▶ One assessment case is very close to a final settlement agreement and we continue to pursue three other cases that are in the early injury assessment phase (Rio Algom, LANL, NASA/White Sands Test Facility).

Curry County Playa Conservation Project



- The project focuses on the conservation of ten private playas and associated uplands which provide critical habitat to very diverse and valuable kinds of flora and fauna, including migratory birds.
- Playas also play a very valuable role as groundwater recharge areas to the Ogallala aquifer, the largest and most important aquifer in the High Plains.
- Conservation agreements with landowners were signed in 2007 and they will come to an end this year. The hope is that landowners will continue the conservation efforts in perpetuity by having learned the positive effects of protecting these sensitive areas.

Questions?

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 USC §§ 9601 et seq]

Title 42, Chapter 103, Subchapter I Section 9607. Liability

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

- ▶ In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however,* That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources.

Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

New Mexico Natural Resources Trustee Act [NMSA 1978, §§ 75-7-1 et seq]

NMSA Article 7 - Natural Resources Trustee

75-7-5. Natural resources trustee fund.

C. In addition to expenditures made pursuant to Subsection B of this section, money shall be appropriated annually by the legislature from the general fund for the purpose of providing for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee in carrying out the provisions of the Natural Resources Trustee Act, including the cost of investigation, assessment, collection or enforcement.

▶ Also.....

A. "...Money in the fund shall not revert to the general fund at the end of a fiscal year."